

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TROY MAGARRELL,

Plaintiff,

No. CIV S-04-2634 LKK DAD P

vs.

P. MANGIS, M.D., et al.,

Defendants.

ORDER

By order filed November 21, 2005, plaintiff's newly substituted counsel was granted fifteen days to file a notice concerning his intention to proceed on the original pro se complaint or to file an amended pleading. No response was filed. In findings and recommendations filed December 13, 2005, the undersigned recommended that defendants Mangis and Sandham be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. No objections were filed.

On January 25, 2006, the court received from the plaintiff in propria persona a letter in which plaintiff states that his attorney "is now M.I.A.," that he had not heard from or seen his attorney since July 26, 2005, and that on January 19, 2006, he had received, marked "Return to Sender," everything he had mailed to his attorney on November 29, 2005. The plaintiff requested an extension of time to respond to the court's November 21, 2005 order

1 concerning service of defendant Mangis. The district judge issued an order holding the pending  
2 findings and recommendations in abeyance so that the plaintiff in propria persona could file a  
3 motion to return to pro per status or retain other counsel. Within the time granted by the district  
4 judge, the plaintiff in propria persona filed objections to the findings and recommendations filed  
5 December 13, 2005, along with a request to return to pro per status. Also within the time granted  
6 by the district judge, plaintiff's counsel filed a declaration in which he claims that he received no  
7 e-mail messages from the court prior to January 26, 2006, when he received a message from  
8 defendant Rocha's attorney and then examined the court's docket for this case. Plaintiff in  
9 propria persona subsequently filed a notice of withdrawal of his request to return to pro per  
10 status.

11 Plaintiff's counsel is referred to Local Rules 5-133 and 5-134. All attorneys who  
12 wish to file documents in the Eastern District of California must be admitted to practice or  
13 admitted to appear pro hac vice, and admission to practice in this district includes the  
14 requirement that the attorney complete an e-filing registration form and receive a user name and  
15 password.<sup>1</sup> Local Rules 5-135(g) & 83-180(f). Each time a document is filed in this court, a  
16 system-generated Notice of Electronic Filing ("NEF") is sent to all attorneys of record who are  
17 registered for electronic service. Local Rule 5-135(a) & (g). In this case, the court's docket  
18 reflects that an NEF was sent to [MRavis@aol.com](mailto:MRavis@aol.com) when plaintiff's motion to substitute attorney  
19 was filed on September 21, 2005, and that an NEF was sent to that same electronic address for  
20 every document filed thereafter through January 30, 2006. It appears that counsel registered a  
21 new electronic address on February 2, 2006, as the docket now shows his address as  
22 [Ravis90064@yahoo.com](mailto:Ravis90064@yahoo.com). For every document filed in this case beginning with the declaration  
23 filed on February 2, 2006, an NEF has been sent to counsel at the yahoo.com address.

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25 <sup>1</sup> Attorneys are encouraged to accept service of documents by electronic means. Local  
26 Rule 5-135(g)(2). The court's records do not reflect that plaintiff's counsel in this case opted out  
of service by electronic means.

1 The record reflects that all orders filed in this action were properly served on  
2 plaintiff's counsel by electronic means. Nevertheless, in the interests of justice, the undersigned  
3 will vacate the pending findings and recommendations.

4 In his declaration filed on February 2, 2006, plaintiff's counsel states that he  
5 would like to file an amended complaint. On December 7, 2005, defendant Roche filed an  
6 answer to the pro se complaint. The filing of a responsive pleading precludes the filing of an  
7 amended complaint except by leave of court or by written consent of the adverse party. Fed. R.  
8 Civ. P. 15(a). Plaintiff will be granted thirty days to file a motion for leave to amend, together  
9 with a proposed amended complaint. Plaintiff's motion must be noticed for hearing before the  
10 undersigned on a regularly scheduled law and motion calendar, and the parties shall brief the  
11 motion in accordance with Local Rule 78-230.

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. This court's findings and recommendations filed December 13, 2005, are  
14 vacated;

15 2. Plaintiff's request for substitution filed February 13, 2006, is deemed  
16 withdrawn by the notice filed February 17, 2006;

17 3. Plaintiff's counsel is granted thirty days to file and serve a noticed motion for  
18 leave to amend, accompanied by a proposed amended complaint; and

19 4. The Clerk is directed to serve a courtesy copy of this order on plaintiff Troy  
20 Magarrell in propria persona at the address shown on the document he filed on February 17,  
21 2006.

22 DATED: August 14, 2006.

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24   
25 DALE A. DROZD  
26 UNITED STATES MAGISTRATE JUDGE

DAD:13  
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